IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 174 OF 2007
IN
WRIT PETITION NO. 953 OF 2007

Afsar Afjal Khan ...Appellant

versus

Nashik Municipal Corporation, Nashik ... Respondent

Mr. Bhavesh Parmar for the appellant.
Ms. Manisha Shekhar, instructed by M/s. J. Shekhar & Co., for the respondent.

CORAM: **SWATANTER KUMAR, C.J.** &
DR. D.Y. CHANDRACHUD, J.

DATE: **OCTOBER 22, 2007**.

P.C.

Challenge in this appeal is to the order dated 17th July, 2007, passed by a learned single Judge granting interim relief in terms of prayer clause (c) of the writ petition, while admitting the petition.

2. The appellant herein was working as a Junior Engineer in the Nashik Municipal Corporation, respondent herein, established under the provisions of the Bombay Provincial Municipal Corporation Act. The appellant approached the Industrial Court at Nashik by filing a complaint, being Complaint (ULP) No. 136 of 2004. This complaint was

allowed by the Member, Industrial Court, Nashik, vide order dated 3rd July, 2006, holding that the respondent-Corporation was engaging in and continued to engage in unfair labour practices under items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act). A further direction was given to the respondent-Corporation that the Appellant should be continued to be employed and also be given promotion to the post of Assistant Engineer within one month from the date of passing of that order. Vide corrigendum dated 5th October, 2006, the member, Industrial Court, Nashik, stated that the expression "Assistant Engineer" would be read as "Junior Engineer".

3. This order was challenged by the respondent-Corporation, as already noticed, by filing the writ petition. The order dated 17th July, 2007 passed by the learned single Judge , reads as under:

"1. Rule.

2. Interim relief in terms of prayer clause (c)"

4. The above order is challenged primarily on the ground that no reasons have been assigned for denying the relief which was granted to the appellant by the Member, Industrial Court, Nashik, after recording of evidence and thus depriving all the benefits granted to

the appellant. The appellant was, it has been submitted, also qualified to hold the said post which finding of fact was recorded by the Member, Industrial Court, Nashik, in view of the Resolution Nos. 1475 and 99 dated 17th March, 2006 and 19th June, 2006 respectively.

5. We do find some merit in the contention raised before us by the learned counsel for the appellant. Be that as it may, it is not necessary for us to discuss in any great detail the arguments advanced on behalf of the appellant in the light of the fact that the learned counsel for the appellant stated that the respondent-Corporation, for the first time, filed documents in the writ petition, while despite grant of opportunity no such documents were filed by the respondent-Corporation before the Industrial Court. He further states that, in all fairness, the matter should be remanded and even if these documents have to be considered, the appellant should be provided adequate opportunity to meet this case. This suggestion has not been opposed by the Counsel for the appellant.

6. The learned counsel appearing for the respondent-Corporation has not disputed the position that these documents were not produced before the Industrial Court.

7. In these circumstances, we find it just, equitable and proper that the order of the learned single Judge under Appeal as well as the order of the Industrial Court are set aside. We order accordingly. The matter is remanded to the Industrial Court, Nashik. The respondent-Corporation will file documents, if any, within four weeks from today, whereafter the matter shall proceed before the Industrial Court in accordance with law. In the event no documents are filed within four weeks and the respondent-Corporation does not pursue its case before the Industrial Court, then the order in question shall be restored and parties would be bound by that order. However, if the documents are filed, opportunity shall be granted to the appellant to meet those documents, whereafter the Industrial Court, Nashik, shall dispose of the matter in accordance with law. Because of default on the part of the Corporation, we also consider it appropriate to impose costs of Rs.5,000/-. Cost shall be paid by the respondent-Corporation to the appellant. The Industrial Court would endeavour its best to expeditiously dispose of the matter and, in any case, not later than six months from the date of filing of the documents.

8. In view of the above, Writ Petition No. 953 of 2007 and the present Letters Patent Appeal are disposed of.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.